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10 Attorneys for Plaintiff
11 WILLIAM J. HOFFMAN, Receiver

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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 WILLIAM J. HOFFMAN, Court-
appointed permanent receiver for
18 Nationwide Automated Systems, Inc.,
Oasis Studio Rentals, LLC, Oasis Studio
19 Rentals #2, LLC, and Oasis Studio
Rentals #3, LLC, and their subsidiaries
20 and affiliates,

Case No. 2:17-cv-5884

COMPLAINT FOR FRAUDULENT
TRANSFER

21 Plaintiff,

22 v.

23 KEITH HENNING, an individual; JOY
HENNING aka JOY CUNNINGHAM,
24 an individual; and DOES 1 THROUGH
10, inclusive,

25 Defendants.

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1 Plaintiff William J. Hoffman of Trigild, Inc. ("Receiver"), the court-appointed
 2 permanent receiver for Nationwide Automated Systems, Inc. ("NASI"), Oasis
 3 Studio Rentals, LLC, Oasis Studio Rentals #2, LLC, Oasis Studio Rentals #3, LLC,
 4 and their subsidiaries and affiliates ("Receivership Entities"), appointed in the
 5 Securities and Exchange Commission ("Commission") enforcement action styled as
 6 *Securities and Exchange Commission v. National Automated Systems, Inc., et al.*,
 7 United States District Court, Central District of California, Case No. 14-CV-07249-
 8 SJO (FFMx) ("SEC Action"), hereby brings the following Complaint against the
 9 above-captioned defendants, Keith Henning and Joy Henning aka Joy Cunningham
 10 ("Defendants"), and alleges, on behalf of the Receivership Entities, as follows:

11 **I. JURISDICTION AND VENUE**

12 1. This Court has jurisdiction over this matter on the basis of diversity of
 13 citizenship of the parties pursuant to 28 U.S.C. § 1332(a)(1), in that the Receiver, in
 14 his capacity as Court-appointed receiver for the Receivership Entities, is a citizen of
 15 the state of California, and Defendants are each citizens of the state of Colorado, and
 16 in that the amount in controversy in this action exceeds the sum or value of \$75,000,
 17 exclusive of interest and costs.

18 2. This Court may exercise personal jurisdiction over the above-captioned
 19 Defendants pursuant to Federal Rule of Civil Procedure 4(k), and 28 U.S.C. §§ 754
 20 and 1692, because Defendants are the recipients of assets of the Receivership
 21 Entities, which assets are alleged, on information and belief, to be located in the
 22 state of Ohio, and because the Receiver has previously complied with the terms of
 23 28 U.S.C. § 754 by filing in the United States District Court for the District of
 24 Colorado copies of the complaint and the order for his appointment filed and entered
 25 in the SEC Action.

26 3. Venue in the Central District of California is proper under 28 U.S.C.
 27 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the
 28 claim at issue occurred in the Central District of California, in that the contracts at

1 issue facilitating the transfers of Receivership Entity funds to Defendants were
 2 entered into in Calabasas, California; the purported business of the Receivership
 3 Entities which generated the funds paid to Defendants were operated from offices in
 4 Calabasas, California; and the receipt and transfers of funds by and between the
 5 Receivership Entities and Defendants were facilitated through financial institutions
 6 located in or around Calabasas, California.

7 **II. PARTIES**

8 4. The Receiver is the duly appointed permanent receiver for the
 9 Receivership Entities, and was appointed permanent receiver for the Receivership
 10 Entities pursuant to a Preliminary Injunction and Orders (1) Freezing Assets;
 11 (2) Prohibiting the Destruction of Documents; (3) Requiring Accountings; and
 12 (4) Appointing a Receiver entered in the SEC Action on October 29, 2014
 13 ("Preliminary Injunction"). Among other things, the Preliminary Injunction calls for
 14 the Receiver to recover and marshal, for the benefit of creditors of and investors in
 15 the Receivership Entities, any and all assets which were owned, leased, occupied, or
 16 otherwise controlled by the Receivership Entities or were otherwise purchased with
 17 assets of the Receivership Entities. The Receiver holds exclusive authority and
 18 control over the assets of the Receivership Entities, including over the causes of
 19 action alleged herein, over which this Court has ancillary and supplemental
 20 jurisdiction.

21 5. On information and belief, Keith Henning, is a citizen and resident of
 22 the County of Gunnison, Colorado, and is the recipient of assets of the Receivership
 23 Entities as described further herein.

24 6. On information and belief, Joy Henning aka Joy Cunningham, is a
 25 citizen and resident of the County of Gunnison, Colorado, and is the recipient of
 26 assets of the Receivership Entities as described further herein.

27 7. The Receiver is ignorant of the true names and capacities, whether
 28 individual, corporate, associate or otherwise, of Does 1 through 10. The Receiver is

1 informed and believes, and based thereon alleges, that each fictitiously named
2 defendant is the recipient of fraudulently transferred funds from the Receivership
3 Entities, or was in some way responsible for, participated in or contributed to the
4 matters and things of which the Receiver complains herein, and in some fashion, has
5 legal responsibility therefor. When the exact nature and identity of such fictitious
6 defendant's responsibility for, participation in and contribution to the matters and
7 things herein alleged is ascertained, the Receiver will seek to amend this Complaint
8 and all proceedings herein to set forth the nature of these defendants' identity.

9 8. The Receiver is informed and believes, and based thereon alleges, that
10 Does 1 through 10, are principals, officers and/or agents of each of the other
11 defendants, and directed, ratified, or caused the conduct and/or omissions alleged in
12 this Complaint. The Receiver is further informed, and on that basis alleges, that
13 Does 1 through 10 are the alter egos of the other defendants, and as such are liable
14 for the conduct and damages alleged against the other defendants herein.

15 9. The Receiver is informed and believes, and based thereon alleges, that
16 Defendants are, and at all times relevant herein were, the agent, principal, partner,
17 co-conspirator and/or co-venturer of Does 1 through 10, that each of them acted
18 within the course, scope and authority of said relationships, and that, as a result, are
19 jointly and severally liable for the acts alleged herein.

III. FACTUAL ALLEGATIONS

A. The Purported Business of the Receivership Entities and the Commencement of the SEC Action

23 10. As alleged by the Commission in the SEC Action, NASI raised money
24 from investors by selling them Automated Teller Machines ("ATMs"), leasing the
25 ATMs back from investors, managing the ATMs for the investors, and paying the
26 investors "rents" that were guaranteed to total at least 20% of the purchase price
27 paid for the ATMs per year. The Receivership entities also paid referral fees to
28 investors and other agents who recruited new investors to purchase ATMs.

1 11. In actuality, the Receivership Entities did not sell any ATMs to
 2 investors, but instead fabricated and sold fictitious ATMs with fabricated serial
 3 numbers and locations. The "rents" paid to investors who purchased fictitious
 4 ATMs, as well as referral fees paid to investors and agents, were paid from the
 5 amounts raised from other investors. Thus, NASI operated a classic Ponzi scheme.

6 12. On or about September 17, 2014, the Commission initiated the SEC
 7 Action against the Receivership Entities and their principals Joel Gillis and Edward
 8 Wishner, alleging violations of federal securities laws. The Commission petitioned
 9 for the Receiver's appointment, and on September 30, 2014, and October 29, 2014,
 10 this Court entered orders appointing the Receiver, first on a temporary basis and
 11 then as permanent receiver for the Receivership Entities.

12 **B. The Receiver's Authority and Investigation Pursuant to His
 13 Appointment**

14 13. Pursuant to the terms of his appointment, the Receiver is vested with
 15 exclusive authority and control over the assets of the Receivership Entities.
 16 Specifically, Article XII of the Preliminary Injunction vests the Receiver with the
 17 "full powers of an equity receiver, including, but not limited to . . . full power to
 18 sue . . . and take into possession all [receivership] property."

19 14. The Receiver's investigation to date supports and confirms the
 20 Commissions allegations in the SEC Action, including that NASI operated a Ponzi
 21 scheme, sold fictitious ATMs to investors and made rent and referral fee payments
 22 to investors from funds raised from other investors. Defendants Gillis and Wishner
 23 filed answers to the SEC's complaint in which they admit the facts supporting the
 24 SEC's Ponzi scheme allegations.

25 **C. Criminal Indictment and Guilty Pleas**

26 15. On December 16, 2014, Gillis and Wishner were arrested and charged
 27 with mail fraud, wire fraud, conspiracy, and aiding and abetting. *United States v.*
 28 *Gillis, et al.*, C.D. Cal. Case No. 14-CR-00712-SJO. Gillis and Wishner waived

1 indictment, surrendered their passports, and were released on bail. On January 13,
 2 2015, and January 21, 2015, respectively, Wishner and Gillis plead guilty to all four
 3 counts of the criminal information. In connection with Gillis' guilty plea, a
 4 statement of facts signed by Gillis that supports the guilty plea was filed by the
 5 government ("Statement of Facts"). As part of his guilty plea, Gillis stated under
 6 oath that the facts in the Statement of Facts were true. The Statement of Facts is
 7 attached hereto as Exhibit A.

8 16. The Statement of Facts is fully incorporated herein by reference. The
 9 facts stated therein are included in this complaint as though fully restated and
 10 alleged herein.

11 **D. The Fraudulent Transfers to Defendants From the Receivership**
 12 **Entities**

13 17. Upon the Receiver's appointment, the Receiver promptly moved to
 14 secure control over NASI's offices, assets, and operations, including its electronic
 15 and physical records and data. Altogether, these records included 92 boxes of
 16 documents and electronic images containing a total of over 56,000 documents.
 17 Despite the large volume of records obtained, there was no way for the Receiver to
 18 identify profiting investors without expending considerable time to reconstruct
 19 financial receipts and disbursements for the Receivership Entities going back more
 20 than 15 years from the date of his appointment. The Receiver's investigation into
 21 the assets and financial affairs of the Receivership Entities was further complicated
 22 because the Receivership Entities did not keep traditional accounting systems or
 23 software, balance sheets, profit and loss statements or other financial statements,
 24 bank statements or other banking records for their accounts, or a traditional database
 25 of investor accounts. Accordingly, at the outset of his appointment and for a lengthy
 26 period of time thereafter, the Receiver had no way to know of specific payments
 27 received from individual investors or payments made to individual investors as
 28

1 purported profits, including payments received from or made to Defendants by
 2 NASI.

3 18. As reliable information about NASI's financial transactions was not
 4 available, the Receiver and his staff had to devote considerable time and diligently
 5 reconstructed the company's ledger of transactions. This required the Receiver and
 6 his staff to manually source information from years of bank statements and cleared
 7 checks in order to create a schedule of checks paid by NASI to investors. On
 8 average, over 2,000 checks were paid by NASI to investors on a monthly basis in
 9 2014. A significant amount of time was also spent by the Receiver and his staff to
 10 reconstruct banking transactions from 2005, 2006 and 2007, as financial institutions
 11 no longer kept these records since they are only required to maintain account
 12 records going back seven years. Reconstruction of these years of payments to
 13 investors was not completed until the second quarter of 2015, and it was not until
 14 the third quarter of 2016 that the Receiver was able to complete the reconstruction
 15 of both payments received from and made to Defendants such that a determination
 16 could be made as to whether Defendants received profits in excess of their initial
 17 deposits.

18 19. Specifically, including payments to and from Defendants going back to
 19 1999, it was not until August 9, 2016 that the Receiver discovered that the
 20 Defendants had received profits over and above their initial deposits. Once
 21 discovered, the Receiver promptly made a demand on Defendants for disgorgement
 22 in a letter dated August 22, 2016. Defendants did not accept the Court-approved
 23 settlement offer in the letter and the Receiver then promptly filed this action.

24 20. Attached hereto as Exhibit B is a schedule of bank transfers from
 25 Defendants to NASI and from NASI to Defendants. As the schedule reflects, the net
 26 amount received by Defendants ("Profit Amount") is calculated by subtracting
 27 (a) transfers from NASI to Defendants ("Payments from NASI") from (b) transfers
 28

1 from Defendants to NASI ("Deposit Amount"). Defendants' Profit Amount is
2 \$133,450.00.¹

3 21. Defendants had no business dealing with NASI apart from transactions
4 relating to the purchase and leasing of fictitious ATMs and provided no services or
5 other value to NASI other than amounts paid for the fictitious ATMs.

COUNT I – FRAUDULENT TRANSFER

7 22. The Receiver incorporates herein each and every allegation contained
8 in Paragraphs 1 through 22, inclusive, hereinabove set forth.

9 23. Over the course of its pre-receivership operations, NASI paid the Profit
10 Amount to Defendants with the intent to hinder, delay, or defraud NASI's creditors.
11 Such payments were made from the proceeds of the Ponzi scheme which were
12 generated from investors in the scheme.

13 24. The Receivership Entities received nothing of value in exchange for the
14 payments that comprise the Profit Amount.

15 25. At the time the payments comprising the Profit Amount were made to
16 Defendants, NASI was engaged in or about to engage in business transactions for
17 which its remaining assets were unreasonably small in relation to the business or
18 transaction.

19 26. NASI was insolvent, or became insolvent, shortly after the subject
20 payments comprising the Profit Amount were made to Defendants.

21 27. NASI intended to incur, or believed or reasonably should have believed
22 it would incur, debts beyond its ability to pay as they became due.

23 28. As a consequence, the full Profit Amount is an actual and
24 constructively fraudulent transfer under California's Uniform Voidable Transactions

27 1 All transfers of Payments from NASI occurring (a) after Defendants received
28 payments equal to the Deposit Amount, and (b) more than seven years prior to
the date of filing this Complaint have been excluded from the calculation of the
Profit Amount

1 Act, Cal. Civ. Code section 3439, *et seq.*, and is subject to immediate disgorgement
2 to the Receiver.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the Receiver prays for judgment against Defendants as
5 follows:

6 (a) For a judgment against Defendants, avoiding the transfer from NASI to
7 Defendants comprising the Profit Amount; and
8 (b) For an order deeming the Profit Amount paid to Defendants to be held
9 in constructive trust for the benefit of the Receivership Entities; and
10 (c) For an order directing Defendants to immediately pay the Profit
11 Amount, plus prejudgment interest and costs, to the Receiver; and
12 (d) For such other and further relief as the Court may deem proper.

13
14 Dated: August 8, 2017

15 ALLEN MATKINS LECK GAMBLE
16 MALLORY & NATSIS LLP
DAVID R. ZARO
TED FATES
TIM C. HSU

17 By: /s/ Tim C. Hsu

18 TIM C. HSU
19 Attorneys for Receiver
WILLIAM J. HOFFMAN